Mohon v. *Harkreader, supra.* Some states hold that, though it is error to hold court at a place unauthorized by law, yet the proceedings had there are not void; *Lessee of Le Grange* v. *Ward et al.*, 11 Ohio 258; *State of Missouri* v. *Peyton,* 32 Mo. App. 522. What is the proper rule? It seems that in the absence of express provision by statute, if the court had jurisdiction of the subject matter and the person, and due notice was given to all parties concerned of the place of removal, and sufficient opportunity to be present without substantial inconvenience, the proceedings there had should be held valid. See *Reed* v. *State* 147 Ind. 41, 46 N. E. 135.

CRIMINAL LAW—ERROR IN ADMISSION OF EVIDENCE.—Plaintiff in error was tried for murder and found guilty on circumstantial evidence. The jury fixed his punishment at death. On his cross-examination it was proved that he had been convicted of a crime and had served in the penitentiary in Kentucky; also that he had once pleaded guilty to larceny in another county. *Held,* such evidence was inadmissible. *People* v. *Blevins* (Ill. 1911) 96 N. E. 214.

It is error to admit proof of other and distinct crimes when not offered to evidence motive, etc., and the court so held in this case. It was insisted, however, by counsel for the State that, though admission of the evidence was error, yet other evidence so clearly showed Blevins guilty that the conviction ought not to be reversed. In answer the court said: "True, error will not always reverse * * * where guilt is conclusively shown, *People* v. *Cleminson* 250 Ill. 135, 95 N. E. 157, but to this rule there are certain exceptions. In murder cases the jury fixes the punishment (either at death, imprisonment for life or term of years not less than fourteen). In this case (the principal case) the death penalty was fixed by the jury, and it may well be that * * * the admission in evidence * * of incompetent testimony calculated to prejudice and degrade plaintiff in error in the minds of the jury, influenced the jury in determining the punishment that should be inflicted. * * * (and) to say that we think he was not prejudiced, would be to establish a dangerous precedent." In support of its decision the court cites *Farris* v. *People,* 129 Ill., 521, 21 N. E. 821, in which defendant was indicted for murder and evidence that after the crime defendant committed rape on the wife of deceased was erroneously admitted. The proof of defendant's guilt was conclusive, yet the court in that case reversed the conviction because though the jury would have found defendant guilty they might not have imposed the death penalty. But it was thought the case of *Farris* v. *People, supra,* was overruled by the case of *People* v. *Cleminson* (Apr. 1911) 250 Ill. 135, 95 N. E. 157, 10 MICH. L. REV. 60, in which defendant was convicted of uxoricide and his punishment fixed at imprisonment for life. Evidence that defendant had committed abortions was erroneously admitted in that case, but the court refused to reverse because it seemed to them that under the evidence defendant was clearly guilty, apparently disregarding the argument in the *Farris* case, *supra,* to-wit: that the jury might have given him a less severe punishment. Had the court in the principal case followed the *Cleminson* case, *supra,* it could not have held as it did. Therefore it

seems the *Cleminson* case has been overruled and the law of *Farris* v. *People, supra,* reestablished.

DAMAGES—BREACH OF CONTRACT TO CARRY DEAD BODY. Plaintiff's son was killed in the State of Washington. She contracted with the defendant railway to ship the remains to her home in Texas within five days. There was delay in forwarding the body and plaintiff brought suit to recover damages for physical pain and mental suffering alleged to have been sustained by her. *Held,* mental suffering is a proper element of damages for breach of such contract. *Missouri K. & T. Ry. Co. of Texas* v. *Linton* (Texas 1911) 141 S. W. 129.

It is a rule of general application that damages for mental anguish are not recoverable in actions on contract. *Beaulieu* v. *Great Northern Railway Co.,* 103 Minn. 47.There are recognized exceptions to this rule as, actions for indignities by railway employees to passengers on railroad trains. *Brown* v. *C. M. & St. P. Ry. Co.,* 54 Wis, 342; actions for breach of promise to marry, *Thorn* v. *Knapp,* 42 N. Y. 474; and breach of contract to send and deliver a telegram, *Louisville & N. R. Co.* v. *Hull,* 113 Ky. 561. But there is conflict as to the doctrine in the last class of cases, the so-called "Texas doctrine" being repudiated by a majority of the State courts. 63 CENT. L. J. 340; *Francis* v. *Western Union Tel. Co.,* 58 Minn. 252; 1 AM. & ENG. ANN CAS. 355, and cases cited. The rule announced in the principal case seems to be drawn by analogy from the doctrine in these telegraph cases. Injury to the feelings is said to be the gist of the damages for breach of the contract on which the action is brought. It is to be noted that most of the States that have passed upon the question involved in the principal case allow a recovery for mental suffering or not according to their position in the telegraph cases. 19 L. R. A. (N. S.) 564, Note; *Western Union Telegraph Co.* v. *Crowley,* 158 Ala. 583, 48 South. 381. That recovery for mental suffering can be had for breach of contract to carry a corpse is expressly denied in *Beaulieu* v. *Great Northern Railway Co., supra.* It is there intimated, however, that if the action had been in tort the holding of the court would have been different, the court saying that recovery could be had only where the breach of contract amounted in substance to "an independent, wilful tort." A dissenting opinion in the Minnesota case is based on the theory that the complaint stated a cause of action in tort as well as in contract. That mental suffering is properly included as an element of damage in actions for a tort committed upon a corpse seems to be well settled. *Bessemer Land etc. Co.* v. *Jenkins,* 111 Ala. 135; *Meagher* v. *Driscoll,* 99 Mass. 281; 3 AM. ENG. ANN. CAS. 136, Note. Although the doctrine followed in the Texas case has made a considerable invasion on the common law rule of damages for breach of contract laid down in *Hadley* v. *Baxendale,* 9 Exch. 341, the courts repudiating it do so in no unmistakable terms. It is said in *Western Union Tel. Co.* v. *Ferguson,* 157 Ind. 64, "So in cases like that at bar the remedy should come from legislation, and not by judicial decision out of harmony with established principles of law."